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FROM AMBASSADOR HUME TO U/S MCHALE, U/S KENNEDY; U/S BURNS, A/S
CAMPBELL
DEPT. FOR EAP/MTS, EAP/PD, R FOR W.DOUGLAS
NSC FOR D.WALTON

E.O. 12958: N/A
TAGS: [AMGT](#) [KPAO](#) [AFIN](#) [ASEC](#) [OEXC](#) [ABLD](#) [ID](#)

SUBJECT: REVIEW OF "THE AMERICAN PLACE" RFP

REF: A) 1/22/10 E-MAIL FROM WHITAKER TO OSIUS AND ANDERSON; B)
JAKARTA 2074

¶1. As follow-up to our January 21, 2010, teleconference, we are pleased to quickly respond in detail to all of the issues and concerns raised in ref A's A/LM/AQM report. We believe that this high priority project must be funded and implemented given the USG's strategic interest in Indonesia. Breaking new public diplomacy ground for the 21st century requires flexibility, creativity and a "whole of government" approach, and we feel our initiative has all of that. But time is of the essence. We only have until March 15 to sign the contract. With your immediate funding, we will succeed in time for a possible POTUS visit and create an effective venue that will support the President's evolving comprehensive partnership with Indonesia.

¶2. In these interests, Mission has entrusted the procurement to USAID which has conducted the procurement according to USG legal requirements. State A/OPE has indicated through AID/W that they are prepared to execute the MOU necessary for the conclusion of this procurement. In this regard, Jakarta's answers to all of the issues/concerns raised by A/LM/AQM follow:

A/LM/AQM/IP (Ann Truitt, 1/9/2010)

(1)Observation: "The problem is, in my opinion, the contracting methodology, and the specifics of the evaluation scheme are "old school" and inconsistent, and fail to capture the desired result of this important new initiative."

Response: The Contracting Officer is provided the authority to exercise his/her discretion in the selection of the approach (Federal Acquisition Regulation (FAR) Subparts 15.1 [Source Selection Processes and Techniques] and 16.1 [Types of Contracts]) which will result in the most effective procurement of a contractual requirement while providing the greatest incentive for the contractor to efficiently and economically attain the objectives of the program. This election in this particular instance was made in full consultation with the U.S. Embassy and was jointly determined most appropriate for this initiative. The design of the Government's requirements was also accomplished in accordance with FAR Part 11 [Describing Agency Needs] where the Contracting Officer determined the Government's requirement to be "contractible".

(2)Observation: "The scope is too broad. The RFP combines both overall concept development, and then the execution of said concept. This is the classic "having the fox guard(ing) the hen-house" scenario that rarely results in a good outcome for the Government."

Response: The RFP did per FAR Subpart 15.2 [Requests for Proposals] appropriately state the Government's requirements with sufficient detail and clarity for prospective offerors to prepare and submit compliant and complete proposals as well for the resultant awardee to satisfactorily perform the contract requirements while meeting the Government's requirements and providing for appropriate

administration of the contract under FAR Part 42. A pre-proposal conference was conducted as provided for under FAR Subpart 15.2 [Contract Administration] where the Government made an extensive effort to review the RFP and make prospective offerors aware of the nature of the Government's requirement, its content and expected levels of contract performance as well as the how to complete and submit a proposals. Amendments were issued subsequent to the pre-proposal conference per FAR Subpart 15.2 [Requests for Proposals] to formally record the Government's responses to questions which arose during the pre-proposal conference and provide additional information.

The Contracting Officer did not deem the provisions of FAR Subpart 9.5 [Organizational and Consultant Conflicts of Interest] to apply to this procurement nor USAID's guidance under Contracting Information Bulletin 99-17 [Organizational Conflict of Interest] as the design of the requirement and its execution would not lead to conflicting roles which might create bias in a contractor's judgment nor provide a competitive advantage. The Contracting Officer's consideration of the elements prescribed under the applicable regulatory guidance found that no conflict of interest would arise in the solicitation of or the performance of the Government's requirement.

(3)Observation: "the scope includes the disparate skill-sets of construction/facility fit-out, design of public diplomacy strategy, and implementation to the detailed level of hiring personnel and operating the American Place. These disparate areas of expertise cannot reasonably be expected to be performed by most contracting firms. The US has several very large and sophisticated firms that might be able to pull it off, but even that would be a performance risk."

Response: The Contracting Officer determined adequate market research was conducted by the U.S. Embassy (FAR Part 10 - Market Research) which established that adequate qualified sources exist having the potential capacity and capability (FAR Subpart 9.1 - Contractor Qualifications) to obtain or to provide the resources required under the Government's requirements. Attendance at the pre-proposal conference was comprised of 53 individuals representing 31 firms from throughout Southeast Asia with both local and expatriate staff. The resultant proposals represented a mix of local and international firms, to include the United States, which partnered under their proposals.

Construction and fit-out are not requirements of the RFP; rather, the requirement is to liaise with the project location's construction contractor (provided by the location's leaser) and assist the Government in coordinating and evaluating the leaser's architect's and construction contractor's execution to assure compliance with the Government's requirements.

While the RFP requires that, "The Contractor must propose and will be responsible to successfully execute an overall strategy," the RFP continues to state that such must, "effectively and innovatively meet(s) the Program Objectives described in Section II." Section II of the RFP requires in the contractor's performance that it:

"develop(ing) an innovative concept for the American Place and subsequently create(ing) the plan for implementation and taking the necessary steps, in full consultation with the U.S. Embassy in Jakarta to execute the concept and provide the subsequent day-to-day management requirements of The American Place, to include ongoing development of programs and exhibits in conjunction and with the approval of the U.S. Embassy.

The basic objectives of The American Place are to develop the U.S.-Indonesian relationship through achievement of the following:

- Improving awareness, changing attitudes, and ultimately improving the image the Indonesian public has of the United States and the American people.
- Creating a more accurate understanding of a diverse and vibrant America for Indonesian communities.
- Reducing skepticism held towards the American people.
- Creating an opportunity for true dialogue through understanding our audiences and providing opportunities to discuss and learn.
- Promoting U.S. higher education.
- Promoting US technology."

Given such, the contractor will not "design" public diplomacy strategy.

Finally, the project staff requirements specified in the RFP (Section C.III.A.5) are considered to be present in the labor market, accessible, complementary in their application under the contract, and of a proper mix for the initiative.

(4)Observation: "I note nothing in the document that articulates that this is a DOS program -- all references, clauses, and terms and conditions are unique to USAID contracts."

Response: As USAID is acting as the procurement agent for the U.S. Embassy Jakarta for this initiative under the request of the Ambassador, this procurement is being conducted in accordance with the State/USAID Joint Management Council procedures for which State Cable 75695 clarified that programmatic procurements will be made by USAID. As such, USAID procurement procedures are applied as well as USAID procurement guidance as well as those of the Federal Acquisition Regulation.

This procurement was thus undertaken as a "whole of government" initiative of the U.S. Embassy Jakarta. The RFP cover letter is clear in this context starting, "The United States Government, as represented by the United States Agency for International Development (USAID) Mission to Indonesia, is seeking proposals," while Section B.1 of the RFP states, "that it will serve as the public face and the public platform for the United States Embassy in Indonesia..." The statement of work included in the RFP (Section C) is replete with clear references to the initiative being a U.S. Embassy Jakarta program for which the Embassy's role is distinctly outlined in the execution, implementation and management of the program and the resultant contract.

(5)Observation: "a very glaring problem that could easily lead to an 'impossibility of performance' argument by a contractor is on page 12, where the contractor is instructed to provide weekly reports on American Place attendance, 'which must never drop below 1500 per week.' The number of people that visit American Place is not in the control of the contractor! And yet, it is a prominent requirement of the RFP. A fine-tooth review of the rest of the document may yield other such examples."

Response: The Government's requirements were designed with the knowledge that the venue (location) for the project will be in a major mall in central Jakarta; a city with a population of over 13 million. The requirement for the number of visits per week was quantified with this knowledge and of the flow of traffic through the city's malls. This requirement, thus, was considered consistent with FAR Subparts 11.1 [Describing Agency Needs] and 11.4 [Delivery or Performance] as well would be addressed under the provisions of FAR Subpart 42.3 [Contract Administration] by the Contracting Officer in concert with the Contracting Officer's Technical Representative (COTR) as contract performance progresses. This latter element is emphasized in the RFP, Section III.A.6. Communications, wherein, "The Contractor must maintain dialogue with the COTR throughout design and implementation to address and coordinate the timely resolution of all technical questions before, during and after implementation."

No further comments are provided on this element in the absence of the specifics as to the "fine-tooth review."

(6)Observation: "the evaluation scheme is very antiquated--DOS hasn't used this type of evaluation scheme in years, if ever. First, on page 49 the cost proposal is included as part of the "Technical Proposal," which is illogical and violates every principle of federal contracting there is! It is also "weighted": tech approach is 30 percent meeting milestones is 25 percent; corporate "creative" capacity (not sure what that is or how you would evaluate that) is 15 percent; staff and key personnel is 10 percent; past performance is 10 percent; and cost is 10 percent.

This evaluation scheme is contradictory to the last paragraph in Section M of the document that says the award will result in "best value" decision... when you weight cost, it is not/best value in contracting terms! And if cost is being weighted, a 10 percent rank

of importance could explain why the proposed winner is 50 percent over the R budget - at 10 percent, there is little or no incentive for industry to consider reasonable costing."

Response: The Contracting Officer is provided the authority to exercise his/her discretion in the identification of the award evaluation factors (FAR Subpart 15.3 - Source Selection, Evaluation Factors) for which those included in the RFP were deemed to represent the elements which are considered key to the source selection decision (FAR Subpart 15.3 - Source Selection, Evaluation Factors). This discretion includes the rating method (FAR Subpart 15.3 - Source Selection, Proposal Evaluation).

The weighting of the evaluation factors, however, demonstrated that factors other than cost are significantly more important than the source selection based on the request of the U.S. Embassy. Cost and cost realism, though, were considered an imperative and integral element of these evaluation factors and thus included as a scored factor (FAR Subpart 15.4 - Contract Pricing, Proposal Analysis Techniques).

Given that this procurement is being conducted as a negotiated procurement under FAR Part 15 [Contracting by Negotiation], the Government will apply the policies of FAR Subpart 15.4 [Contract Pricing] for contract pricing as well as those of FAR Subpart 15.3 [Source Selection] for exchanges or discussions (negotiations) which will result in the best value award.

ELSO (Tim Farrell, 1/10/2010)

(1)Observation: "The RFP has planning, administration, design and construction services within the SOW. Fit-out of leased space would fall under construction services. Also, the same firm can't design then perform the construction."

Response: The RFP does not require the contractor to construct or fit-out the project's location; this is to be accomplished by the location leaser's contractor. Additionally, the RFP does not specify that a registered or licensed architect or engineer is required to perform the design services. Section C.III.A.2 of the RFP states:

12. Site Evaluation and Fit-Out: Based on the approved Commercial Plan, the Contractor will evaluate the site identified for The American Place with respect to scope of work required to implement the plan. The Contractor will identify and propose an architect or space planner as a subcontractor to the Contractor to assist in refining the scope of the project and develop the construction/fit-out plans which must be approved by the U.S. Embassy COTR. The Contractor will evaluate and recommend approval or disapproval of the architect's preliminary work plan and schedule, and detail and confirm costs according to the budget strategy envisioned in the Overall Strategy. The Contractor will coordinate with the landlord of the leased space and oversee the fit-out of the acquired space and ensure completion according to a negotiated schedule which is compliant with the contract performance timeline incorporated herein and the COTR approved Commercial Plan.

The related award evaluation criteria of the RFP states:

1A. TECHNICAL PROPOSAL

1. Technical Approach : (30 points)

Demonstrated sound and logical approach to the preparation for, execution of and successful management and long term maintenance of project management programs of a duration and similar nature to that of The American Place. Demonstrated creativity in the concept for the physical design and fitting of The American Place as well as the conduct of programs which will attain the outreach objectives of this project. Ability to establish a public focal point which will best serve the interests and goals of the U.S. Embassy in opening and operating The American Place.

(2)Observation: Section C. II. PROGRAM OBJECTIVES. The Contractor (also hereinafter referred to as the "Project Manager") will be charged with designing and implementing the project of The American

Place in Jakarta Indonesia, as well as subsequent administration and staffing. This will include developing an innovative concept for the American Place and subsequently creating the plan for implementation and taking the necessary steps, in full consultation with the U.S. Embassy in Jakarta to execute the concept and provide the subsequent day-to-day management requirements of The American Place.

Determining the concept, the design, staffing, and day to day management appears to have a conflict of interest. Design and staffing could be proposed in a manner most beneficial to the contractor. This is also difficult to compute as a fixed-price.

Response: Please refer to Response (2) under A/LM/AQM/IP comments above.

(3) Observation: CLIN 0001B. Site Fit Out. Contractors are asked to provide a fixed price for the space fit-out. However, the actual space to be used is not identified. No specs or standards are provided for the fit-out. See RFP below:

F.4. PLACE OF PERFORMANCE

The place of performance will be Jakarta, Indonesia and a commercial location which will be specified following award of the contract.

Response: The pre-proposal conference clarified, and it was documented in a subsequent amendment to the RFP, that the space for the venue would be 500 to 700 square meters.

(4) Observation: Section C. The contractor is asked to propose a budget strategy. The USG should have prepared an Independent Government Cost Estimate (IGE). See below:

SECTION C: III. "The proposals submitted must effectively and efficiently achieve all of these objectives and demonstrate the Contractor's ability to meet the timeline, as well as propose a budget strategy to meet the ultimate objective of a formal "hard opening."

Response: The U.S. Embassy has prepared an Independent Government Cost Estimate (IGCE).

(5) Observation: Section C. Part IV. Contract Performance Timeline. This needs to be shown in the number of days after award of the contract. It currently states "Presentation of Commercial Plan on Sept. 16, 2009." Without knowing the award date this is not possible. Timeline should have had a line for "Approval of space," "Plans by USG," and a "Notice to Proceed."

Response: The American Place initiative was undertaken with the specific direction to establish an operational program by September 11, 2009, so as to allow the formal opening of the venue in concert with the POTUS visit which was anticipated in September 2009. Accordingly, the Contract Performance Timeline was established to meet this mandate and the sequence of events prescribed in the RFP as well as emphasized during the pre-proposal conference as outlined below. USAID committed itself to the award of the contract by September 11, 2009. (Footnote: USAID was prepared to make the award on September 11, 2009, as requested.)

- Close of acceptance of proposals, August 18, 2009
- Targeted contract award, September 11, 2009
- Soft Opening of The American Place, November 1, 2009
- Hard Opening of The American Place, November 16, 2009

The "Approval of the Space Plan" was an element of the Timeline prescribed in Section C of the RFP as "Presentation of Commercial Plan," etc., along with the corresponding completion date. As indicated above, these and other dates were prescribed in the RFP, reviewed during the pre-proposal conference, and would have been committed to under the contract award to meet the POTUS visit date. These dates included the following contract accomplishments:

- Presentation of Commercial Plan, September 16, 2009
- Submission of Approved Specifications for Required Equipment, September 18, 2009
- Submission of Proposed Architect or Space Planner Subcontractor, September 18, 2009
- List of Proposed Staff (Other Than "Key Personnel") Submitted for Approval, September 21, 2009
- Fit-Out of Space Begins, September 21, 2009

--Submission of Plan for Initial Project Programs and Activities, September 25, 2009
--Training for Proposed Staff Begins, October 12, 2009
--Soft Opening of American Place, November 1, 2009
--Formal ("Hard") Opening of The American Place, November 16, 2009

As this requirement does not meet the definition of construction (FAR Subpart 2.1 - Definitions] and, thus, would not be procured as a construction contract (FAR Part 36 - Construction Contracting), a "Notice to Proceed" is not required for the contractor to commence work under the contract; rather, the bilaterally executed contract award will serve this purpose.

(6)Observation: Section C. Part III. (2). Site Evaluation and Fit-Out: This part of the SOW requires an architect. A/E services have a whole set of FAR requirements not addressed in RFP. Don't see how you can fix-price this work when the contractor is asked to refine the scope of the project.

"Based on the approved Commercial Plan, the Contractor will evaluate the site identified for The American Place with respect to scope of work required to implement the plan. The Contractor will identify and propose an architect or space planner as a subcontractor to the Contractor to assist in refining the scope of the project and develop the construction/fit-out plans which..."

Response: Please refer to Response (1) above.

(7)Observation: Evaluation Factors for Award. The cost proposal is only given 10 points (10 percent) as an evaluation factor. This is inconsistent with the award of a firm-fixed-price contract. This is a FAR 15 solicitation. Evaluation of cost at 10 percent does not appear to be "Best Value" for USG in accordance with FAR 15.101.

Response: Please refer to Response (6) under A/LM/AQM/IP comments above.

(8)Observation: L.10 Instructions for Preparation of the Cost Proposal. A cost proposal format should have been included for the offerors. Firms are asked to propose prices in accordance with Section B. A detailed cost proposal format should have been required. Not sure how you can compare offerors cost proposals if there is not a format used by all offerors.

Response: The Contracting Officer deemed that Section L.10 of the RFP provided sufficient specific directions (per FAR Subpart 15.2. Solicitation and Receipt of Proposals, Requests for Proposals) as to the offerors' preparation of cost proposals to permit the evaluation, to wit:

"(a) The Offeror's cost proposal must address all aspects of the contract's scope of work and be presented according to the Contract Line Items specified in Section B of this solicitation. Within the Offeror's presentation, the Offeror will clearly depict those costs related to the categories of: start-up/capital expenses, development of equipment and technology needs, and ongoing administrative expenses (salaries, infrastructure, etc.). Proposed salaries for staff must be broken down into categories of personnel, including: Home Office Project Administrator (In-Country), Site Manager, Site Assistant Manager, Full Time Staff, AV/Computer Staff, Cleaning and Security Staff.

(b) The Offeror's cost proposal is to be supported by information which will provide sufficient detail so as to allow a complete analysis of each line item cost. This presentation is to include a complete breakdown of the cost elements associated with each line item and those costs associated with any proposed subcontract, consultancy or sub agreement (provide separate breakdown) for each year of the Contract."

14. Conclusion: Our response to A/LM/AQM's comments indicate that there is no barrier to moving forward, nor anything that would impede a proper award contract. With the CR over, now is the time to approve FY2010 funding for the American Place. Every day of delay degrades our capacity to produce the best venue and program in time for a potential launch by the President. The proposal is ready for Washington's approval and funding. We have secured an extension until March 15, and, as soon as the Department approves funding, the contract can be signed and work can begin.